

## REMARKS

This Amendment is submitted in response to an Office Action mailed May 23, 2005.

### Allowable Subject Matter

In paragraph 2 of the Office action the Examiner withdrew allowance of claims 1-10 in view of newly discovered reference Tostado (US 2002/0093622). Applicant respectfully traverses this withdrawal for the reasons explained below.

### Claim Rejections – 35 USC §102

In paragraph 3 of the Office Action the examiner rejected Claims 1-10 under 35 USC §102 as being anticipated by Tostado (US 2002/0093622). The Applicant respectfully traverses the rejection.

According to the published Tostado application, the application was filed December 24, 2001 and is based on provisional application No. 60/257,667 filed on December 22, 2000. Initially the Applicant points out that if these dates are correct, then the non-provisional application cannot claim the benefit of the provisional application because the non-provisional application was not filed within a year of the filing date of the provisional application. Furthermore, the Applicant has not examined the Tostado provisional application to determine the content thereof. However, even assuming for the sake of argument that the non-provisional application is entitled to the date of December 22, 2000, and further that everything disclosed in the non-provisional application was

disclosed in the provisional application, nevertheless, neither the provisional application nor the non-provisional application can properly be cited against Applicant's claims.

The reason for this is that the Applicant filed his application October 16, 2000, which is before December 22, 2000, the filing date of the Tostado provisional application and December 24, 2001, the filing date of the Tostado non-provisional application. On the other hand, the Examiner based his rejection on 35 USC §102(b) which refers to prior art which was described in a printed publication "more than one year prior to the date" of filing of the examined application. Accordingly the Applicant respectfully requests that the Examiner withdraw his rejection.

#### Information Disclosure Statement

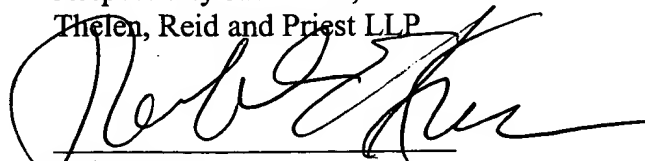
The Applicant has submitted an information Disclosure Statement with a completed Form 1449 which was received by the PTO October 16, 2000. However, the Examiner has not initialed the Form 1449 and returned it to the Applicant. The Applicant respectfully requests the Examiner to do so.

#### Summary

In view of the remarks herein the Applicant respectfully requests the Examiner to pass this case to allowance.

Dated: 8/16, 2005

Respectfully submitted,  
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